

**Department of Energy**

Albuquerque Operations Office

P.O. Box 5400

Albuquerque New Mexico 87115

Received DOE  
Grand Jct. Proj. Office

AUG 31 1992

AUG 27 1992

Mr. Robert E. Ivey  
U.S. Department of Energy  
Grand Junction Projects Office  
P.O. Box 2567  
Grand Junction, CO 81502-2567

Re: Todilto Exploration and Development Corporation  
(Mining Lease AT(05-1)-ML-60.8-NM-B-1)  
EBCA No. C-9201117

Dear Mr. Ivey:

Enclosed, for your records, are two copies each of the Motion to Dismiss with Prejudice and the Settlement Agreement in the above-referenced case.

Very truly yours,

*Margaret Sanchez*  
for Dean A. Arnold  
Attorney  
Office of Chief Counsel

2 Enclosures (2)

DEPARTMENT OF ENERGY  
BOARD OF CONTRACT APPEALS

TODILTO EXPLORATION AND )  
DEVELOPMENT CORPORATION ) EBCA No. C-9201117  
(Mining Lease AT(05-1)-ML-60.8-NM-B-1) )

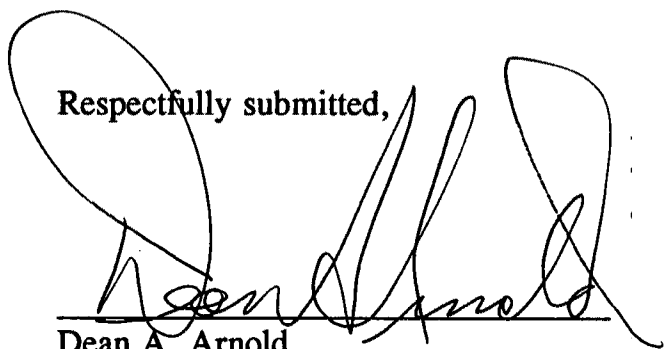
MOTION TO DISMISS WITH PREJUDICE

(August 3, 1992)

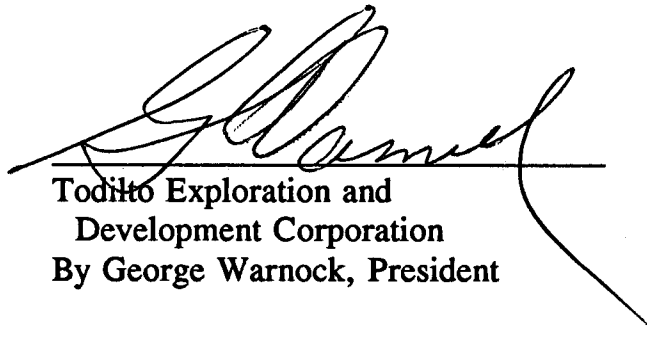
COMES NOW, Respondent, the United States Department of Energy, by and through its attorney of record, and the Appellant, Todilto Exploration and Development Corporation, and jointly move the Energy Board of Contract Appeals to dismiss the above-styled cause of action with prejudice for the reason that the parties have amicably resolved the issues with regard to this matter.

THEREFORE, the parties hereto request that the above-styled cause of action be dismissed with prejudice.

Respectfully submitted,



Dean A. Arnold  
General Attorney  
Office of Chief Counsel  
U.S. Department of Energy  
Albuquerque Field Office  
P.O. Box 5400  
Albuquerque, NM 87185-5400  
(505) 845-6214



Todito Exploration and  
Development Corporation  
By George Warnock, President

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 8th day of August, 1992, by and between Todilto Exploration and Development Corp., a New Mexico corporation, George Warnock, and the United States Department of Energy.

### RECITALS

1. Lease. Todilto Exploration and Development Corp., a New Mexico corporation, and George Warnock, an individual, are lessees (hereinafter "Lessee") under a certain Mining Lease No. AT(05-1)-ML-60.8-NM-B-1, as modified (hereinafter "Lease"), entered into June 12, 1974, by and between Lessee and the United States of America, as Lessor. Under said Lease, Lessee has a right to explore for, develop, mine, and remove deposits of uranium from the southeast quarter (SE ¼) and the south half of the north half (S ½, N ½) of Section 13, Township 13 North, Range 11 West, New Mexico Principal Meridian, in McKinley County, New Mexico.
2. Lease Term. The Lease expires on June 12, 1994, but may be further extended for additional periods not to exceed ten (10) years each, based on a determination for each extension by the Contracting Officer pursuant to 10 Code of Federal Regulations (C.F.R.) § 760.1 (u) that such extension is in the best interest of the Government. No extension shall be granted if the Contracting Officer determines that the Lessee is in default of one or more of the terms and conditions of the Lease or that the Lease should be re-issued through competitive bidding pursuant to 10 C.F.R. § 760.1 (d).
3. Cancellation of Lease. On or about December 30, 1991, the United States Department of Energy (DOE) notified Lessee that a determination had been made that Lessee was in breach of Articles XV and VI of said Lease, thereby justifying cancellation, effective immediately, of said Lease pursuant to Article XXIV, entitled "Cancellation of Lease." Further, Lessee was directed to surrender the leased premises in its present condition without removing any timbers, improvements or any security or safety measures previously installed.
4. Appeal to the Energy Board of Contract Appeals. On or about January 16, 1992, Lessee filed a Notice of Appeal with the Energy Board of Contract Appeals with regard to the determination of the Contracting Officer to cancel the Lease and the determination that Lessee was in breach of the terms of said Lease. Further, Lessee alleges in the Appeal that cancellation of the Lease constitutes a taking of Lessee's leasehold rights.

5. Reclamation Effort. DOE desires to take possession of the above-described property and commence certain reclamation efforts in order to mitigate any possible health or safety hazards which may exist on said premises. The reclamation efforts are more fully described in the Statement of Work attached hereto as Exhibit 1, and incorporated herein by reference. DOE's reclamation efforts may vary from those items enumerated in Exhibit 1 in that it may only be necessary to cover the former ore pad area with excavated soil to the depth of one foot.

### AGREEMENT

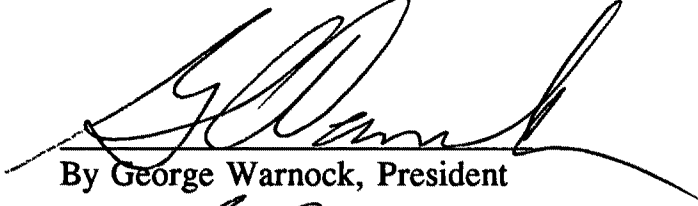
1. Release by DOE. In consideration of the mutual covenants contained herein, the DOE releases and covenants not to sue Lessee with regard to any and all liabilities, duties or obligations under, or arising out of, the terms and conditions of the aforesaid Lease including payment of any royalties due thereunder and performance of any work as specified in the "Mining Plan," but specifically excluding any liabilities, claims (including claims for contribution), or causes of action which may arise under federal, state, tribal or local laws, regulations or rules, as a result of the condition of the premise as it may exist subsequent to completion of reasonable efforts on the part of DOE to perform the above-described reclamation efforts. Said release and covenant not to sue shall include Lessee's heirs, assigns, officers, directors, employees, agents and subcontractors.
2. Release by Lessee. In consideration of the mutual covenants contained herein, Lessee releases and covenants not to sue DOE with regard to any and all liabilities, duties or obligations under, or arising out of, the terms and conditions of the aforesaid Lease and under federal, state, tribal or local laws, regulations or rules. Lessee's release and covenant not to sue shall include DOE's assigns, successors in interest, employees, agents and contractors. Lessee further understands that DOE agrees to be solely responsible for the expense incurred in completing the above-described reclamation effort and that Lessee hereby releases and covenants not to sue DOE with regard to any liabilities, claims or causes of action under federal, state, tribal or local laws, regulations or rules, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substance Control Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Surface, Mining Control and Reclamation Act, the Uranium Mill Tailings Radiation Control Act, and the National Environmental Policy Act. Lessee further acquiesces to the cancellation of the aforesaid Lease and relinquishes any claims to a property interest in said premises under the terms and conditions of the Lease. Further, Lessee agrees to execute a Motion to Dismiss

with Prejudice the Appeal presently pending before the Energy Board of Contract Appeals.

3. Effective Date. This Settlement Agreement will be effective upon, and contemporaneous with, execution by and on behalf of the parties referenced herein.

Todilto Exploration and Development Corp.

SEAL



By George Warnock, President



George Warnock, Individually

U.S. Department of Energy



By

ROBERT E. IVEY  
CONTRACTING OFFICER